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Federal Communications Commission

DA 01-1828

2001 AUG -3 P 1: 28

2002 AUG -3 P 1: 26

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations.
(Destin, Florida)

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) MM Docket No. 01-171
) RM-10158
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NOTICE OF PROPOSED RULE MAKING

Adopted: July 31, 2001

Released: August 2, 2001

Comment Date: September 24, 2001

Reply Comment Date: October 9, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by six mutually-exclusive applicants ("Joint Applicants")¹, for vacant NTSC channel 64, Destin, Florida. The Joint Applicants request the substitution of channel 48 for channel 64 at Destin, Florida.²

2. The Joint Applicants seek to invoke the provisions outlined in the Commission's Public Notice (*Public Notice*) released on November 22, 1999, DA 99-2605. In that *Public Notice* the Commission announced a window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69. The Joint Applicants also note that their proposed channel substitution fails to protect Class A LPTV station WDES-LP operating on channel 48 at Destin. However, the Joint Applicants submit that Beach TV Properties, Inc., licensee of WDES-LP, has agreed to modify the WDES-LP facility or cancel its license in order to remove any conflict with the Joint Applicants' proposal. The Joint Applicants state that the grant of their proposal would preserve the opportunity for a first local television service to Destin while promoting the objectives set forth in Section 307(b) of the Communications Act.³

¹ The applicants include: Kaleidoscope Partners, E. Terrill Weiss d/b/a West Florida TV Acquisition Company, Delta Media Corporation, Marri Broadcasting Corporation, ValueVision International, Inc., and Winstar Broadcasting Corporation.

³ See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) and *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358 (1955).

3. We believe the Joint applicants' proposal warrants consideration. A staff engineering analysis indicates that Channel 48 can be allotted to Destin, Florida, with a zero offset consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. The coordinates for Channel 48 at Destin are North Latitude 30-30-52 and West Longitude 86-13-12. Pursuant to the Commission's policy as noted in its *Public Notice*, we will not accept competing expressions of interest in the use of television channel 48 at Destin.⁴

4. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Destin, Florida	64+	48

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before September 24, 2001, and reply comments on or before October 9, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Howard M. Weiss
Fletcher, Heald & Hildreth, PLC
11th Floor
1300 North 17th Street
Arlington, Virginia 22209-3801
(Counsel for Joint Applicants)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of

⁴ New and amended rulemakings petitions submitted during the noted window filing opportunity will be subject to the Commission's normal notice and comment procedures. However, the Commission indicated in the *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968 (1996), that new proposals for additional NTSC channel allotments will not be accepted. Furthermore, new parties may not counterproposal a new NTSC allotment in the same or nearby communities. The opportunity for filing counterproposals is limited to those parties with existing petitions and applications that are the subject of the announced filling window indicated in the Commission's *Public Notice*.

Allotments, Section 73.606(b). See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments,

pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.